

Dena Marie Young [SBN 215344]
LAW OFFICES OF DENA MARIE YOUNG
2751 4th Street, PMB #136
Santa Rosa, CA 95405
Telephone: (707) 528-9479
Email: dmyounglaw@gmail.com

Michael D. Schwartz, Esq. [SBN 166556]
THE MICHAEL SCHWARTZ FIRM
3580 Wilshire Boulevard, Suite 1260
Los Angeles, CA 90010
Telephone: (323) 793-6735
Email: mds@themichaelschwartzfirm.com

Kasey A. Castillo, Esq. [SBN 236690]
KC LAW GROUP
Mail: 31566 Railroad Canyon Road
Suite 2, PMB 1123
Canyon Lake, CA 92587
Telephone: (951) 364-3070
Email: kasey@kc-lawgroup.com

Attorneys for Defendant
DEVON WENGER

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

DEVON WENGER,

Defendant.

Case Nos. 23-cr-00268-002 JSW
23-cr-00269-003 JSW

**DEFENDANT'S
CONSOLIDATED SENTENCING
MEMORANDUM AND REQUEST
FOR DOWNWARD VARIANCE**

Date: December 2, 2025
Time: 1:00 p.m.
Court: Hon. Jeffrey S. White

Defendant DEVON WENGER, by and through his counsels of record, hereby submits his
Sentencing Memorandum.

INTRODUCTION

In case 23-cr-00268, Mr. Wenger was convicted following jury trial of Conspiracy to
Distribute and Possess with Intent to Distribute Anabolic Steroids in violation of 21 U.S.C. §§
846, 841(a)(1) and (b)(1)(E)(i) [Count 1] and Destruction, Alteration and Falsification of
Records in Federal Investigations in violation of 18 U.S.C. § 1519 [Count 4].

1 In case 23-cr-00269, Mr. Wenger was convicted following jury trial of Conspiracy
2 Against Rights in violation of 18 U.S.C. § 241 [Count 1]. Mr. Wenger was acquitted by this
3 Court of Deprivation of Rights Under Color of Law [Count 8].

4 These cases were consolidated for sentencing.

5 The presentence report calculates an adjusted offense level of 31. Combined with a
6 criminal history category of I, the resulting guidelines range is 108-135 months imprisonment.
7 No outstanding objections remain with respect to case 23-cr-00268 [Count Group 1]. In case 23-
8 cr-00269, the defense agrees with the probation officer's decision to eliminate the conduct
9 charged in acquitted Count 8 from sentencing consideration. However, significant disagreements
10 remain with regard to the government's assertions of fact which are reflected in the presentence
11 report, and regarding the scope of the conspiracy actually proved by the government in light of
12 the acquittal of Morteza Amiri as a co-conspirator. These unresolved objections impact the
13 calculation of total adjusted offense level. Based on the evidence at trial, defense counsels
14 believe that the final adjusted offense level should be 27, with resulting guidelines of 70-87
15 months.

16 For the reasons discussed below, counsel for Mr. Wenger requests that this Court impose
17 a custodial sentence of 36 months. Such a sentence would be a sufficient sentence within the
18 meaning of *Gall v. United States*, 552 U.S. 38 (2007), and is consistent with the factors set out in
19 18 U.S.C. § 3553(a).

20 21 I.

22 OBJECTIONS TO THE PRESENTENCE REPORT

23 Counsel for Mr. Wenger has no outstanding objections to the criminal history calculation
24 set forth in the Presentence Report. Mr. Wenger has no prior criminal history.

25 Counsel for Mr. Wenger accepts the probation officer's resolution of the adjusted offense
26 level for Count Group 1 at level 14 based on the destruction of evidence charge rather than the
27 drug guidelines [Case 23-cr-00268].
28

1 Counsel also agrees with the probation officer's decision to remove acquitted conduct in
2 case 23-cr-00269 from sentencing consideration for the reasons set forth in the presentence
3 report.

4 However, as noted above, there remain significant differences between the "facts"
5 asserted by the government as reflected in the presentence report, and the evidence presented at
6 trial in case 23-cr-00269. Specifically:

7 In ¶ 24: The Government claims multiple witnesses testified, but only Rombough, an
8 alleged conspirator, was involved. It wrongly claims multiple co-conspirators testified; only
9 Rombough did, and no evidence supports the presence of more than one conspirator since Amiri
10 was acquitted of conspiracy. The statement about victim testimony is also inaccurate—CY, who
11 was a suspect, not a victim, testified. CY was identified as a robbery suspect who attempted to
12 flee and evade arrest, resulting in the application of force that she later claimed caused her
13 injuries. There has never a determination that Wenger engaged in excessive force. These points
14 will be addressed further in the objections. Officer Nielson testified contradicting CY's
15 testimony that the force applied was excessive directly disproving the Government's position
16 that the encounter was in furtherance of a conspiracy.

17 In ¶ 27: The government's summary materially misstates the trial record. The evidence
18 did not show that Mr. Wenger agreed with, joined, or participated in any plan with Officers
19 Amiri or Rombough to use excessive force or to conceal such force. The government relied
20 heavily on Exhibit 102, which contained numerous text threads exchanged solely between Amiri
21 and Rombough, including statements such as "I want to fuck someone up," "Bro I need to hit
22 someone with my flashlight," and "We need to smash heads on Monument" (Exhibit 102) None
23 of these messages mention Wenger, and no witness testified that Wenger saw, knew about, or
24 endorsed them. Furthermore, Amiri was acquitted of the conspiracy; there is, therefore, no
25 evidence that Wenger entered into a conspiracy that could not have existed (based on Amiri's
26 acquittal). The government presented no independent evidence that Wenger joined any
27 agreement to "create opportunities" for force, "intercede to avoid detection," or falsify reports.
28 Its current description simply attributes the rhetoric and conduct of others to Wenger, which is

1 improper. Because the record does not support the government’s claims, the characterization
2 should be rejected.

3 In ¶ 28: The government’s statement mischaracterizes the record. Rombough’s testimony
4 described his own attitudes and conduct, and the text messages relied upon were overwhelmingly
5 private exchanges between Amiri and Rombough, in which Wenger did not appear and was not
6 referenced (Exhibit 102). No witness testified that Wenger shared their views, participated in
7 discussions about using unlawful force, agreed to conceal force, or falsified reports in
8 coordination with them. The government’s assertion that Wenger “joined” any such agreement is
9 unsupported by the evidence and improperly attributes the state of mind and conduct of others to
10 Wenger without independent proof. Again, this was Rombough’s description of his own conduct.
11 The government introduced no evidence that Wenger shared this belief or participated in uses of
12 force for this purpose. The isolated statement of Amiri vouching for Wenger does not establish
13 an agreement or shared unlawful purpose. The record contains no evidence that Wenger agreed
14 to, planned, or coordinated excessive force with either officer.

15 In ¶ 29: The government’s characterization of this April 20–21, 2019 message is
16 inaccurate. The text reflects Wenger responding to workplace rumors about “call dodging” and
17 seeking to clear up a misunderstanding, not soliciting, discussing, or agreeing to use excessive
18 force. The message contains no reference to force, no request to use force, no plan to find a
19 suspect, and no language suggesting participation in unlawful conduct. It is a reputational and
20 relational text about wanting to be viewed as a reliable officer, not a statement of conspiratorial
21 intent. No witness testified that this message related to excessive force, and no evidence links
22 this exchange to any specific use of force. Therefore, it cannot serve as proof that Wenger joined
23 any conspiracy. Any characterization of Amiri being a coconspirator is incorrect in that Amiri
24 was acquitted on conspiracy.

25 In ¶ 30: This exchange does not reflect Wenger joining any conspiracy. The texts show
26 Wenger seeking clarification about a perceived interpersonal issue and asking whether he had
27 done something wrong, not planning, requesting, or agreeing to use force. Amiri’s response that
28 they should “talk in person so things don’t get misunderstood” likewise indicates uncertainty and

1 miscommunication, not shared unlawful intent. The follow-up message between Amiri and
2 Rombough (“I told him the same thing as soon as he sent that”) simply reflects their
3 discussion of how to address Wenger’s concern, not agreement to commit misconduct, and no
4 statement in this thread references force, targets, or any unlawful purpose. Further, any
5 characterization of Amiri being a coconspirator is incorrect in that Amiri was acquitted on
6 conspiracy.

7 In ¶ 31: The government’s characterization overstates what the messages show. The text
8 in which Wenger sent a photo and said “find this guy” reflects frustration about a suspect who
9 fled, not an organized plan to use unlawful force. The message does not reference “excessive” or
10 illegal force, and *the record contains no evidence that any force was actually used as a result of*
11 *that text*. The quick responses (“Deal” / “I’ll bite ’em”) read as casual, reactive banter and
12 humor—there is no follow-through, no coordinated plan, and no action tied to it. Wenger’s text
13 “Please find this guys and fuck him the ass,” is offensive hyperbole and cannot be taken literally
14 or to self-servingly interpreted to mean excessive force, especially when no evidence was
15 presented to show any force, much less excessive force was used. This exchange, standing alone,
16 does not show that Wenger entered into any agreement with Rombough (Mr. Amiri having been
17 acquitted of conspiracy). It reflects frustration and informal officer chatter, not a shared intent to
18 commit unlawful violence. Further, again, any characterization of Amiri being a coconspirator is
19 incorrect in that Amiri was acquitted of conspiracy.

20 In ¶ 32: The government’s statement improperly assumes its conclusion. The incidents it
21 references were each addressed at trial as separate encounters with distinct circumstances, and
22 none established that Wenger acted pursuant to any agreement with Amiri or Rombough. The
23 government is grouping unrelated events to imply a conspiracy, yet there was never a factual
24 finding nor determination that any or all of those incidents were relied upon by the jury as
25 predicate or overt acts in furtherance of the conspiracy. It was the government’s theory, but there
26 was never any finding linking those acts to the conspiracy charge. Additionally, the use of force
27 is legally permitted under the Fourth Amendment when reasonably necessary to detain or
28

1 apprehend a suspect, and whether force was justified in any given incident must be evaluated
2 individually, not assumed collectively.

3 In ¶ 33: The government’s description does not accurately reflect the trial testimony. The
4 evidence showed that the Claudjanae and China Young incident occurred during a rapidly
5 evolving and chaotic scene in which both sisters were actively resisting officers, and multiple
6 officers were involved in the physical contact. Testimony from the scene established that
7 Wenger’s actions occurred during efforts to gain control and secure compliance, not as part of
8 any coordinated plan to inflict harm, and there was no testimony that he intended to injure either
9 individual. As it relates to China, no evidence was offered to prove that China was injured. China
10 did not testify, no medical records were introduced, no photographs of injuries were introduced,
11 only a still frame looking at the back of Wenger and China was introduced for the proposition,
12 that somehow there was an injury to China’s face, not depicted in that still photo and video; no
13 contact between China Young and the vehicle is seen in the photo only a perception from behind.

14 The claim that Wenger “falsified” his police report is also unsupported by the record. The
15 reports were consistent with Officer Nilson’s testimony describing the struggle, and no witness
16 testified that Wenger inserted false information or concealed force. The government’s
17 characterization replaces the actual evidence with self-serving interpretation and should be
18 rejected.

19 In ¶ 34: The government’s summary omits the context shown in the testimony. The scene
20 was active and tense, with multiple people present, movement occurring, and officers giving
21 commands which were being at times ignored, other times defied. Witness testimony differed
22 regarding whether Claudjanae stepped quickly toward the residence or “ran,” reflecting differences in
23 perception—not intentional falsification. The report accurately conveyed Wenger’s understanding of
24 the event in real time, and no testimony established that he knowingly or even made a false
25 statement. Moreover, no evidence or determination has been presented that the force used was
26 excessive force given the circumstances Wenger faced attempting to effectuate the arrest of
27 Claudjanae Young and China Young.

1 In ¶ 35: The government’s description overstates the testimony and assumes disputed
2 facts as true. The report states that Wenger attempted to detain Claudjanae and that she pulled
3 away and tensed; the trial testimony reflected conflicting accounts about how quickly the
4 physical struggle began and how much resistance occurred. The fact that Claudjanae later
5 suffered a fracture does not establish that Wenger used unlawful force or that his report was
6 false. No witness testified that Wenger intended to injure her, and the injury occurred during a
7 dynamic, hands-on detention with a non-compliant felony suspect.

8 The fact that Rombaugh’s claim that Wenger later told him the “bitch got what she
9 deserved” appears in the record does not establish that he intended or used excessive force at *the*
10 *time of the incident*. The text reflects a post-incident emotional reaction, not evidence of pre-
11 planning, coordinated action, or purposeful infliction of injury. The trial testimony showed
12 conflicting accounts of how the physical encounter began and whether Claudjanae was pulling
13 away or complying, and the injury occurred during a fast-moving detention. The existence of an
14 injury and a later comment made in frustration do not prove that the force used was excessive,
15 nor that Wenger acted pursuant to any agreement or unlawful purpose.

16 In ¶ 36: The government’s description oversimplifies and selectively characterizes the
17 bystander video. Testimony at trial reflected that the scene was tense, multiple people were
18 approaching, voices were raised, and officers were attempting to maintain control. The video
19 does not show what China said, how she moved, or what Wenger perceived in that moment. Any
20 difference between Wenger’s report and the video reflects real-time perception versus later video
21 review, not a falsehood. The video does not establish that Wenger intended to use unlawful force
22 or acted as part of any agreement; it shows a rapid, ambiguous physical interaction during an
23 evolving crowd-control situation.

24 In ¶ 37: The government’s description overstates what the video actually shows. The
25 bystander recording captures the back view only, without a side or profile angle, and therefore
26 lacks depth perception regarding the distance between China’s face and the patrol car. From that
27 viewpoint, it is not possible to determine whether her face made contact with the vehicle, at what
28 force (if it actually did), or whether any movement was a stabilizing maneuver versus a strike.

1 Any difference in wording between Wenger's report and the video reflects real-time perception
2 during a physically dynamic escort, not a falsification or excessive force.

3 In ¶ 38: The government's statement mischaracterizes the reporting requirements and the
4 record. The "Blue Team" entry reflects Wenger's understanding of the incident at the time,
5 which involved a rapidly developing struggle with multiple moving parts. The omission of
6 specific injury details does not establish intent to conceal anything, particularly where the video
7 and full incident reports were available to supervisors. Describing China as the "primary
8 aggressor" reflects Wenger's perception that she resisted and attempted to pull away, which was
9 supported by portions of the testimony and video evidence. The reference to the keys as a
10 potential weapon in an early draft does not show falsification; officers are trained to consider and
11 describe objects that could be used to strike during a physical encounter. This is also
12 corroborated by the video when one of the filming bystanders repeated "that's why you leakin'"
13 referring to Wenger bleeding from being assaulted by China with what he thought were keys in
14 her hand. None of this establishes a coordinated effort to misrepresent the event or participate in
15 any conspiracy.

16 In ¶ 39: The government's characterization assigns intent to Wenger that the record does
17 not support. The body-worn camera footage in this incident shows a standard K-9 apprehension,
18 coordinated with another agency, where the Pittsburg officer's camera was already recording.
19 The later text exchange reflects retrospective venting and frustration, not a plan to use unlawful
20 force. Wenger's response that he "doesn't like body cams" expresses a sentiment common
21 among many officers regarding administrative scrutiny and paperwork, not an agreement to
22 inflict excessive force. There is no evidence that Wenger took any action in this incident that
23 exceeded lawful force or that he coordinated with Amiri to do so. Further, again, any
24 characterization of Amiri being a coconspirator is incorrect in that Amiri was acquitted on
25 conspiracy.

26 In ¶ 40: The government's position conflates separate strands of informal officer banter
27 with proof of a coordinated, criminal agreement involving Wenger. The record does show that
28 Amiri and Rombough discussed wanting a "dog bite" and to "fuck him up" in private messages

1 between them (see Ex. 102, pp. 2489–2494, read into the record). Those private Amiri–
2 Rombough plans, however, do not alone transform Wenger’s later, braggadocio-style texts into
3 evidence that he joined a pre-existing unlawful plot, especially when one of the alleged
4 “plotters” was acquitted of co-conspiracy.

5 Wenger’s messages on August 22 are ambiguous, colloquial, and reflect posturing and
6 frustration rather than a detailed plan or mutual undertaking; the mere temporal proximity
7 between Wenger’s texts and a later lawful contact with a wanted suspect does not prove a prior
8 agreement or coordinated intent. The government offers no transcript evidence of joint planning,
9 specific operational coordination, or corroborating actions showing Wenger agreed to an
10 unlawful purpose. The government’s inference therefore overreaches the record and should be
11 rejected. Further, any characterization of Amiri being a coconspirator is incorrect in that Amiri
12 was acquitted on conspiracy.

13 In ¶ 41: The government’s description exaggerates the severity of the injury and
14 misrepresents the record. There is no evidence that Wenger, nor anyone actually struck
15 Chicklero. The photo the government relies on shows smeared blood, not “profuse bleeding,”
16 and the source, amount, and timing of that blood were not established at trial. The government
17 also leaves out of its analyses and position the report of Officer Becerra, who was one of the
18 officers on scene; the Becerra report being consistent with Amiri’s report. The text exchange
19 between Amiri and Wenger (“hahaha. chicklero style.”) reflects post-incident commentary, not
20 evidence of how the force was applied or that Wenger used or encouraged unlawful force.
21 Further, any characterization of Amiri being a coconspirator is incorrect in that Amiri was
22 acquitted on conspiracy.

23 In ¶ 42: The government’s characterization overstates what the November text exchange
24 shows. The messages reflect after-the-fact banter and emotional commentary, not a description
25 of what actually occurred during the arrest. The texts do not establish that face punches were
26 used, when any injury occurred, or who caused it. No witness testified that Wenger struck
27 Chicklero, directed force, or observed any force beyond the K-9 apprehension and takedown.
28 The fact that Amiri did not reference certain details in his report or file a separate use-of-force

1 form concerns Amiri's reporting, not Wenger's conduct. There was no evidence that Wenger
2 violated any reporting requirement or withheld force information. The government is inferring
3 coordinated misconduct without evidentiary support. Further, any characterization of Amiri
4 being a coconspirator is incorrect in that Amiri was acquitted on conspiracy.

5 In ¶ 43: The government's reliance on this text exchange overstates what the record shows.
6 These messages are retrospective, boastful commentary about an apprehension—venting and bravado
7 after the fact—not proof that Wenger participated in planning or executing unlawful force. The trial
8 testimony established a K-9 tracking and an apprehension; it did not establish that Wenger was
9 present, that any officer intentionally turned off body cameras, or that Wenger directed or agreed to
10 illegal conduct in that event.

11 Moreover, the photo and the post-event texts do not substitute for independent evidence of
12 wrongdoing: they do not identify who inflicted any injury, when it occurred, or whether the force
13 was excessive under the circumstances. Enthusiastic, crude post-hoc messages do not prove
14 excessive force was used, nor the existence of a preexisting agreement or knowing participation by
15 Wenger and therefore cannot support the government's conspiracy claim. Further, any
16 characterization of Amiri being a coconspirator is incorrect in that Amiri was acquitted on
17 conspiracy.

18 In ¶ 44: The government's reliance on this exchange is misplaced. On its face, the texts
19 read like post-shift, immature bravado, not a specific, actionable plan to commit unlawful
20 violence. Absent any contemporaneous planning, logistical coordination, or follow-through tied
21 to those words, the messages are ambiguous and insufficient to prove a criminal agreement.
22 Moreover, the record contains no independent evidence that Wenger took steps to carry out any
23 such scheme or that any unlawful force resulted from this remark. Standing alone, this colloquial
24 exchange cannot support the inference that Wenger joined a conspiracy to use excessive force
25 with someone who, again, was acquitted of such a conspiracy. Further, any characterization of
26 Amiri being a coconspirator is incorrect in that Amiri was acquitted on conspiracy.

27 In ¶ 45: The government's reliance on these texts to portray a planned, actionable assault
28 is unsupported by the record. The messages appear in a group chat with blunt, colloquial

1 language and read as posturing and venting about a perceived theft—not as evidence of a
2 concrete plan. There is no record evidence, only innuendo, that any assault on Mason Ziegler
3 was ever carried out, that Wenger took any preparatory steps or even knew about such an
4 amorphous event, or that the group coordinated a time, place, or means to commit violence.
5 Further, Amiri was acquitted of conspiracy, contradicting the government’s position placing him
6 at the heart of the alleged conspiracy connected to Zeigler.

7 Moreover, isolated online bravado—especially in a group chat context—does not prove
8 criminal intent or participation in a conspiracy. Without corroborating acts, victim injury, or
9 testimony showing tying in Wenger or proving he acted on these messages, the PSR’s
10 characterization is speculative and should be removed or revised to reflect that the texts, standing
11 alone, are ambiguous and non-probative. Further, any characterization of Amiri being a
12 coconspirator is incorrect in that Amiri was acquitted on conspiracy.

13 In ¶ 46: This description does not support the assertion that Wenger participated in or
14 agreed to any unlawful conduct involving Ziegler. The testimony showed that other officers
15 encountered Ziegler and that Amiri later arrived; there was no testimony that Wenger was
16 present, involved in the stop, or aware it was happening in real time. In fact, the testimony at trial
17 was that Wenger was on duty at the tie and, therefore, could have participated had he chosen to,
18 directly contradicting the government’s position.

19 Regarding the alleged event, the fact that officers stood several car lengths away and
20 could not hear the interaction underscores that the encounter was not coordinated and provides
21 no basis to link Wenger to any use of force or decision-making in that incident. The
22 government’s implication of Wenger is therefore unsupported by the trial record. Further, any
23 characterization of Amiri being a coconspirator is incorrect in that Amiri was acquitted on
24 conspiracy.

25 Under the Federal Rules of Criminal Procedure,) requires this Court, at sentencing,
26 “must--for any disputed portion of the presentence report or other controverted matter--rule on
27 the dispute or determine that a ruling is unnecessary either because the matter will not affect
28 sentencing, or because the court will not consider the matter in sentencing” *Fed.R.Crim.P., Rule*

32(i)(3)(B). This Court is in a strong position to resolve disputed issues of fact as this Court heard the trial. This Court is also aware that Morteza Amiri, the only charged “conspirator,” other than cooperating witness Eric Rombaugh, was acquitted of conspiracy on the same “facts.” While the 9th Circuit permits inconsistent verdicts, the acquittal of Amiri raises questions regarding the scope of the conspiracy for which Mr. Wenger can be held responsible as the conduct engaged in by Amiri of his own accord was not reasonably foreseeable to Mr. Wenger, nor did he engage in that conduct personally.

The resolution of these issues is necessary to determine what incidents (meaning which Count Groups) should be included as objects of the conspiracy, which specific offense characteristics apply and ultimately how grouping points are assigned. Specifically, counsel for Mr. Wenger believes that the following changes to the presentence report should apply:

Offense Level Computation – Count Group 3, §§ 69,74

No evidence was presented at trial that China Young actually received any injury as result of resisting arrest. Therefore, the three-level enhancement for injury pursuant to USSG § 2A2.2(b)(3)(B) does not apply. The resulting adjusted offense level for this count group is 20 rather than 23.

Offense Level Computation – Count Group 4, §§ 76,81

No evidence was presented at trial that Marc Chicklero actually received any injury as result of the conduct of Mr. Wenger or any other officer. Therefore, the three-level enhancement for injury pursuant to USSG § 2A2.2(b)(3)(B) does not apply. The resulting adjusted offense level for this count group is 20 rather than 23.

Offense Level Computation – Count Group 5, §§ 82-89

The conduct involved in this count group was engaged in by Amiri alone. At best, the evidence shows that Mr. Wenger was told about it after the fact. As Amiri was acquitted of conspiracy, this conduct cannot be part of any conspiracy. Therefore, it is not chargeable against Mr. Wenger. This count group should be eliminated.

Offense Level Computation – Count Group 6, ¶¶ 90,95

There is no evidence that the text messages established anything more than blowing off steam. There was no assault on Mason Ziegler, nor is there any evidence that any steps were taken to assault him. Further, the only possible “co-conspirator” to this text exchange was Amiri who was acquitted of conspiracy. This count group should be eliminated.

Multiple Count Adjustment ¶ 96

Group/Count	Adjusted Offense Level – Draft PSR	Adjusted Offense Level – Corrected	Units (Corrected)
Count Group 1	14	14	0.0
Count Group 2	25	25	1.0
Count Group 3	23	20	0.5
Count Group 4	23	20	0.5
Count Group 5	27	0	0
Count Group 6	16	0	0
Total Number of Units:			2.0

Greater of the Adjusted Offense Levels Above: ¶ 97

As discussed above, this should be 25 NOT 27

Increase in Offense Level: ¶ 98

The level increase based on 3 groups pursuant to the table at USSG §3D1.4 is +2 rather than the +4 in the draft PSR.

Combined Total Offense Level / Total Offense Level ¶¶ 199, 102

Adjusted offense level 25 + 2 gives a total offense level of 27 rather than 31 as set forth in the draft PSR.

Guideline Provisions, ¶ 131

Based on a total offense level of 27 and a criminal history category of I, the guidelines imprisonment range is 70-87 months.

Judiciary Sentencing Information ¶¶ 151-152

During the last five fiscal years (FY2020-2024), there were 6 defendants whose primary guideline was §2H1.1, with a Final Offense Level of 27 and a Criminal History Category of I, after excluding defendants who received a §5K1.1 substantial assistance departure. For the 5

1 defendants (83%) who received a sentence of imprisonment in whole or in part, the average
 2 length of imprisonment imposed was 40 month(s) and the median length of imprisonment
 3 imposed was 33 month(s).

4 II.

5 OBJECTIONS TO THE GOVERNMENT REQUEST

6 It is anticipated that the government will argue for the inclusion of acquitted conduct
 7 related to Count 8 in case 23-cr-00269 as part of the basis for the conspiracy. As noted above,
 8 counsel for Mr. Wenger agrees with the probation officer's decision to exclude such conduct.

9 USSG § 1B1.3(c) states: "Relevant conduct does not include conduct for which the
 10 defendant was criminally charged and acquitted in federal court, unless such conduct also
 11 establishes, in whole or in part, the instant offense of conviction."

12 Mr. Wenger was acquitted of the use of force with respect to Dajon Smith. More than
 13 that, the court found that that no reasonable person could find that the force used was
 14 unreasonable. The conduct was legal and within the bounds of duty. As a lawful act, it cannot
 15 support a conspiracy charge either. Therefore, this count group was properly eliminated from
 16 sentencing consideration.

17 III.

18 **THIS COURT SHOULD IMPOSE A SENTENCE OF 36 MONTHS** 19 **BECAUSE IT IS A SUFFICIENT SENTENCE CONSIDERING THE** **FACTORS SET OUT IN 18 U.S.C. § 3553(A).**

20 While the guidelines must be respectfully considered, they are one factor among the §
 21 3553(a) factors that are to be taken into account in arriving at an appropriate sentence. *United*
 22 *States v. Carty*, 520 F.3d 984, 992 (9th Cir.2008). Sentencing courts must give "meaningful
 23 consideration" to all of the statutory factors in 18 U.S.C. §3553(a). Section 3553(a) clearly
 24 states that a court must impose a sentence that is "sufficient but not greater than necessary to
 25 comply with the purposes of sentencing. This requirement is often referred to as 'the parsimony
 26 provision,' and the Supreme Court has referred to it as the "overarching instruction" of 18
 27 U.S.C. §3553(a). See *Kimbrough v. United States*, 552 U.S. 85 (2007). Although the offender's
 28

conduct is part of the sentencing equation, it is not the totality of it, and the sentencing court must not focus on the offense at the expense of the individual offender. *United States v. Booker*, 543 U.S. 220 (2005) and *United States v. Ameline*, 409 F.3d 1073 (9th Cir.2005)(*en banc*). The sentence must be long enough to reflect the seriousness of the offense, provide for just punishment and promote respect for the law. Further, it should afford adequate deterrence to criminal conduct in general and protect the public. It must be “sufficient but not greater than necessary” to reflect societal concerns and individual considerations.

IV. EVALUATION

Counsel for Mr. Wenger defers to the probation report for the description of Mr. Wenger’s personal history and circumstances and believes that probation’s evaluation of the case is well-reasoned. However, counsel for Mr. Wenger believes that the recommended sentence of 72 months is greater than necessary under the circumstances.

Mr. Wenger has no criminal history. Rather he has a record of pro-social behavior. He experienced a very difficult childhood as is described in the presentence report. Mr. Wenger served his country, first in the Army from which he was honorably discharged, then in the National Guard for another nine years. His deployment in Afghanistan involved clearing improvised explosive devices at great risk to himself. He experienced a great deal of violence in that role. Like many soldiers, he compartmentalized the trauma rather than seek counseling. However, he channeled his pain productively into sports and religion. He volunteered his time to coach youth sports in his church community.

Mr. Wenger has an established home with his wife, who is currently in the military. He will return to that home with her full support when he is released from custody. He has substantial support from his family and friends. Any sentence Mr. Wenger receives will be more difficult for him given his background as a police officer. His security needs may restrict his ability to participate in programming at whatever institution he is assigned. For someone who has never before been incarcerated, any sentence will be sufficient to make sure that he never places himself in such a position again.

1 A sentence of 36 months is in line with that received by others for the same conduct
2 based on the JSIN data reported above. It is also not inconsistent with the sentence received by
3 Amiri who was found to have personally perpetrated extremely violent acts for which Mr.
4 Wenger was not present and not involved.

5 For these reasons, counsel for Mr. Wenger believes that a custodial sentence of 36 months
6 followed by a period of supervised release would be a sufficient sentence. This represents a
7 downward variance from the guidelines range but is consistent with the 18 U.S.C. § 3553(a)
8 factors as applied to Mr. Wenger.

9 **CONCLUSION**

10 For the foregoing reasons, Counsel for Mr. Wenger requests that this Court impose a
11 custodial sentence of 36 months followed by a period of supervised release. Such a sentence is
12 reasonable within the meaning of *Gall v. United States*, 552 U.S. 38 (2007) and consistent with
13 the factors set out in 18 U.S.C. § 3553(a).

14 Dated: November 26, 2025

Respectfully Submitted,

15 /s/
16 DENA MARIE YOUNG

17 /s/
18 MICHAEL D. SCHWARTZ

19 /s/
20 KASEY CASTILLO

21 Attorneys for Defendant
22 DEVON WENGER
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